

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #4	CCRB Case #: 201704266	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 07/29/2016 7:20 PM	Location of Incident: § 87(2)(b) and inside the 69th Precinct stationhouse	Precinct: 69	18 Mo. SOL 1/29/2018	EO SOL 1/29/2018	
Date/Time CV Reported Wed, 05/17/2017 3:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/30/2017 12:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Gergis	04088	950487	069 PCT
2. POM John Arkenau	27195	945476	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Gergis	Abuse: Police Officer John Gergis entered and searched § 87(2)(b) in Brooklyn.	
B.POM John Arkenau	Abuse: Police Officer John Arkenau entered and searched § 87(2)(b) in Brooklyn.	
C.POM John Gergis	Abuse: At § 87(2)(b) in Brooklyn, Police Officer John Gergis stopped § 87(2)(b)	
D.POM John Arkenau	Abuse: At § 87(2)(b) in Brooklyn, Police Officer John Arkenau stopped § 87(2)(b)	
E.POM John Arkenau	Discourtesy: At § 87(2)(b) in Brooklyn, Police Officer John Arkenau spoke discourteously to § 87(2)(b)	
F.POM John Gergis	Discourtesy: At § 87(2)(b) in Brooklyn, Police Officer John Gergis spoke discourteously to § 87(2)(b)	
G.POM John Gergis	Abuse: At § 87(2)(b) in Brooklyn, Police Officer John Gergis threatened § 87(2)(b) with the use of force.	
H.POM John Gergis	Off. Language: At § 87(2)(b) in Brooklyn, Police Officer John Gergis made remarks to § 87(2)(b) based upon ethnicity.	
I.POM John Gergis	Abuse: At § 87(2)(b) in Brooklyn, Police Officer John Gergis arrested § 87(2)(b)	
J.POM John Arkenau	Abuse: At § 87(2)(b) in Brooklyn, Police Officer John Arkenau arrested § 87(2)(b)	
K.POM John Arkenau	Force: At § 87(2)(b) in Brooklyn, Police Officer John Arkenau used a chokehold against § 87(2)(b)	
L.POM John Gergis	Discourtesy: At § 87(2)(b) in Brooklyn, Police Officer John Gergis spoke discourteously to § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.POM John Gergis	Abuse: Inside the 69th Precinct stationhouse, Police Officer John Gergis did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 17, 2017, Sgt. Peter Duke of IAB reported this complaint with the IAB Command Center via phone on behalf of § 87(2)(b). The complaint was received at the CCRB on May 30, 2017.

On July 29, 2016, at approximately 7:20 p.m., § 87(2)(b) was sitting on the front steps of his private home at § 87(2)(b) § 87(2)(b) in Brooklyn when PO John Gergis and PO John Arkenau of the 69th Precinct parked across the street in their marked police van. § 87(2)(b) walked to the side of his house and entered his backyard through a gate. PO Gergis and PO Arkenau followed § 87(2)(b) entered the backyard through the gate, and looked around the backyard (**Allegation A and Allegation B**). PO Gergis asked § 87(2)(b) for his identification, and PO Gergis and PO Arkenau walked with § 87(2)(b) to his car so that he could retrieve his identification from the car (**Allegation C and Allegation D**). § 87(2)(b) removed his identification from his car, provided it to PO Gergis, and told PO Gergis to check the address on the identification. PO Arkenau said, “Watch your fucking mouth” (**Allegation E**). PO Gergis said, “Did I fucking curse at you?” (**Allegation F**) while lunging toward § 87(2)(b) with a clenched fist (**Allegation G**). PO Gergis referred to § 87(2)(b) as a “little bitch” (**Subsumed within Allegation F**). PO Gergis also said, “I’ll take your ass back to your country” to § 87(2)(b) who is an American citizen of Arab descent (**Allegation H**). § 87(2)(b) told PO Gergis that he was born in the United States, and PO Gergis, who speaks Arabic, allegedly said, “I don’t give a fuck, kahwel” (**Subsumed within Allegation F**). Kahwel is an Egyptian word that translates to “faggot” in English.

PO Gergis and PO Arkenau placed § 87(2)(b) under arrest for § 87(2)(b), § 87(2)(a) 160.50 § 87(2)(b) (**Allegation I and Allegation J**). The officers grabbed § 87(2)(b)’s arms to handcuff him, and § 87(2)(b) moved away from them. PO Arkenau pushed § 87(2)(b) against his vehicle to overcome his resistance, and § 87(2)(b)’s face and body struck the car, allegedly causing § 87(2)(b) to sustain a chipped tooth (**Subsumed within Allegation J**). PO Gergis said, “Turn the fuck around” while pulling § 87(2)(b)’s arms behind his back (**Subsumed within Allegation F**). PO Gergis also gestured toward § 87(2)(b) with his flashlight or his fist while saying, “I’ll beat the shit out of you” (**Subsumed within Allegation G**). During the arrest, PO Arkenau allegedly wrapped his arm around § 87(2)(b)’s head and used the inside crease of his elbow to make contact with the front of § 87(2)(b)’s neck (**Allegation K**). § 87(2)(b)’s breathing was not restricted from PO Arkenau’s alleged chokehold. The officers handcuffed § 87(2)(b) and placed him inside their police van.

§ 87(2)(b)’s sister, § 87(2)(b) father, § 87(2)(b) and cousin, § 87(2)(b) § 87(2)(b) witnessed § 87(2)(b)’s arrest, and they spoke with PO Gergis and PO Arkenau after § 87(2)(b) was placed in the van. PO Gergis explained the circumstances of § 87(2)(b)’s arrest and said, “So, you need to teach your son some manners. He calls me a kahwel? I’ll fuck his ass up. You understand?” (**Allegation L**). PO Gergis also said, “He took a shit on me. That’s what he did. So, now he’s gonna be in my cell” (**Subsumed within Allegation L**).

PO Gergis and PO Arkenau transported § 87(2)(b) to the 69th Precinct stationhouse. § 87(2)(b) allegedly told PO Gergis that his tooth hurt and that he wanted to “see someone” to treat the pain. PO Gergis allegedly did not respond and did not obtain medical treatment for him (**Allegation M**).

§ 87(4-b), § 87(2)(g)

There is video footage of the incident which was recorded on a surveillance camera on § 87(2)(b)'s house (BR 07). § 87(2)(b) provided the video footage to the CCRB via email. The video is located in IA 29 and is embedded below.



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§ 87(2)(g)

Mediation, Civil and Criminal Histories

This case was unsuitable for mediation due to the concurrent IAB investigation. § 87(2)(b) filed a Notice of Claim against the City of New York in regards to this incident, and he settled his claim for approximately \$30,000 to \$40,000 in damages (BR 08). § 87(2)(b), § 87(2)(c)

09). § 87(2)(b)'s charges resulting from this incident were dismissed.

Civilian and Officer CCRB Histories

This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (BR 10).

PO Gergis has been a member of the NYPD for six years and has been the subject of one prior complaint (case 201701903) involving three allegations. As of the date of this report, PO Gergis' prior complaint is still under investigation and involves threat of arrest, discourtesy, and offensive language allegations. § 87(2)(g)

PO Arkenau has been a member of the NYPD for nine years and has been the subject of seven prior complaints involving 16 allegations, none of which were substantiated. § 87(2)(g)

Findings and Recommendations

Allegations not pleaded

Force: Push - § 87(2)(b) alleged that PO Arkenau pushed him into his car twice to place him under arrest. Because the video footage showed that PO Arkenau's pushes were incident to § 87(2)(b)'s arrest, the physical force allegation was subsumed within **Allegation J** and was not pleaded.

Abuse of Authority: Search of Recording Device and Deletion of Electronic Information - § 87(2)(b) testified during his civil case that PO Gergis searched his cellphone and deleted all of his saved data from the phone (BR 08). § 87(2)(b) did not make those allegations during his CCRB interview. PO Gergis and PO Arkenau both denied that any officer took those actions. § 87(2)(g)

Allegation B – Abuse of Authority: Police Officer John Arkenau entered and searched § 87(2)(b) **in Brooklyn.** § 87(2)(b)

[illegible]

According to PO Gergis, he was notified over the radio to call the 69th Precinct T/S operator. PO Gergis called the T/S operator on his cellphone, and the T/S operator said that the 69th Precinct received an anonymous 311 call alleging that a male was selling drugs out of a potato chip bag in front of § 87(2)(b) § 87(2)(b). The T/S operator provided a specific clothing description and physical description of the suspect, but PO Gergis did not recall any of the details of those descriptions. PO Arkenau stated that the complaint came over the radio as a 911 call but otherwise provided testimony consistent with PO Gergis about the complaint. Neither officer could recall any other details reported in the anonymous complaint (BR 02-03).

PO Gergis and PO Arkenau exited their vehicle, entered § 87(2)(b)'s backyard, and looked around the backyard. PO Gergis denied that he spoke with § 87(2)(b) prior to entering the backyard. Both officers entered the backyard to investigate the anonymous complaint, and both officers looked around the backyard for the potato chip bag because neither officer saw the bag when they entered the backyard. PO Gergis said that he did not suspect § 87(2)(b) of committing a crime, and PO Arkenau said that he suspected § 87(2)(b) of selling drugs due to the anonymous complaint.

The 311 call index from the date of the incident revealed that there was no 311 call reporting drug activity at § 87(2)(b) § 87(2)(b) in Brooklyn (BR 11). The EVENT, EVENT index, and 911 CD revealed that there was no 911 call about any such crime (BR 12-13). As of the date of this report, the 69th Precinct T/S log, which lists calls made directly to the stationhouse, has not been received (BR 31). § 87(2)(b) s arrest report was prepared and entered by PO Gergis. The arrest report notes that the officers responded to an anonymous 311 call reporting “a male with blue shirt and black shorts selling drugs out of a bag of chips.” The arrest report notes that § 87(2)(b) matched the exact description reported in the 311 call (BR 14).

The video footage of the incident shows the officers arrive on the scene and shows PO Gergis speak to someone through the window of his van prior to approaching § 87(2)(b) (See embedded video). PO Gergis says, “Hey, bud. Yo, did you call us? Whose car is this? You’ve got to move it. Someone called and said you’re blocking the driveway. Isn’t that a driveway? Who else lives in that house? Do they have a car?” <00:53-01:26>. The video also shows PO Gergis speak while gesturing to § 87(2)(b) s parked car and facing § 87(2)(b) s backyard <00:53-01:26>. § 87(2)(b) viewed the video and stated that PO Gergis was speaking with him while he was in the backyard.

PO Gergis viewed the video footage, and he denied speaking with § 87(2)(b). He stated that he was speaking with a different civilian in a double-parked van behind the officers’ vehicle. PO Gergis claimed that he said, “You’re double-parked. You’re blocking the driveway.” The video footage shows that PO Gergis said, “Someone called and said you’re blocking the driveway.” The video footage does not show PO Gergis say anything about a double-parked vehicle <00:53-01:26>. PO Arkenau viewed the video footage and stated that PO Gergis was speaking with § 87(2)(b) <00:53-01:26>.

The video footage shows PO Gergis and PO Arkenau approach § 87(2)(b) s backyard and then exit the frame of the camera as they reach the gate <01:26-01:52>. The video does not show the officers’ interactions with § 87(2)(b) in the backyard.

Officers may enter a private residence without a warrant when they have probable cause to arrest combined with exigent circumstances. People v. McBride, 14 N.Y.3d 440 (2010). The curtilage of the home – the area immediately surrounding and associated with the home – is part of the home itself. People v. Theodore, 114 A.D.3d 814 (2014). A backyard in close proximity to a home and enclosed by barriers is part of the curtilage of the home. People v. Theodore, 114 A.D.3d 814 (2014). (BR 15 and BR 31).

Officers must confirm the reliability of an anonymous tip to establish suspicion of criminality, and an anonymous tip cannot establish suspicion of criminality unless it contains predictive information suggestive of criminal behavior. An anonymous tip does not establish suspicion of criminality if officers confirm descriptions of a subject’s appearance and location but do not confirm indicators of criminality. People v. Rice, 168A.D.2d 901 (1990); People v. Moore, 6 N.Y.3d 496 (2006); Florida v. J.L., 529 U.S. 266 (2000). (BR 16-18).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis stopped § 87(2)(b)

Allegation D – Abuse of Authority: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Arkenau stopped § 87(2)(b)

It is undisputed that PO Gergis and PO Arkenau requested § 87(2)(b)'s identification inside of his property and instructed him to exit his property with the officers.

According to § 87(2)(b) he told the officers that they needed a warrant to be on his property, and PO Gergis told § 87(2)(b) that he did not need one. PO Gergis asked for § 87(2)(b)'s identification, and § 87(2)(b) told PO Gergis that his identification was inside of his car. PO Gergis told § 87(2)(b) to retrieve his identification, and § 87(2)(b) and the officers walked to the car.

§ 87(2)(b) exited the house and observed the officers as they interacted with § 87(2)(b) inside the backyard. § 87(2)(b) exited his house because he observed the police van parked across the street, and he did not hear any noises outside prior to exiting. § 87(2)(b) did not know what the officers or § 87(2)(b) said to each other because § 87(2)(b) only speaks Arabic. § 87(2)(b) stated that the interaction appeared normal.

According to PO Gergis, § 87(2)(b) said, “What the fuck are you doing here? Get off my property.” PO Gergis then asked for § 87(2)(b)'s identification because § 87(2)(b) was guilty of disorderly conduct due to his raised voice and use of profanity, which might have disturbed other people in the neighborhood. PO Gergis intended to issue a disorderly conduct summons to § 87(2)(b) at that time. According to PO Gergis, § 87(2)(b) refused multiple commands to provide his identification by saying, “Fuck off.”

PO Arkenau did not recall the content of the conversation inside the backyard. PO Arkenau stated that § 87(2)(b) was “non-compliant,” but he could not explain how § 87(2)(b) was non-compliant. PO Arkenau stated that § 87(2)(b) clenched his fists and adopted a “fighting stance,” but PO Arkenau could not describe the “fighting stance.” The officers asked § 87(2)(b) to step onto the street due to his alleged disorderly behavior, and he did so.

The video does not show the interaction in the backyard <01:52-02:41>. The audio does not reveal loud noises coming from the backyard during the interaction.

Officers must have reasonable suspicion of criminality to stop a person People v. DeBour, 40 N.Y.2d 201 (1976). A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he uses abusive or obscene language in a public place. A person may be guilty of disorderly conduct only when the situation extends beyond the individual disputants to become a potential or immediate public problem. PL§240.20; People v. Baker, 20 N.Y.3d 354 (2013); People v. Gonzalez, 25 N.Y.3d 1100 (2015). (BR 19-22).

§ 87(2)(g)

[REDACTED]

Allegation E – Discourtesy: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Arkenau spoke discourteously to § 87(2)(b)

Allegation F - Discourtesy: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis spoke discourteously to § 87(2)(b)

Allegation G - Discourtesy: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis threatened § 87(2)(b) with the use of force.

Allegation H - Discourtesy: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis made remarks to § 87(2)(b) based upon ethnicity.

According to § 87(2)(b) he exited the backyard, walked to his car, retrieved his identification from the vehicle, and handed his identification to PO Gergis. § 87(2)(b) told PO Gergis to check the address on his identification, and PO Arkenau said, “Watch your fucking mouth.” PO Gergis then said, “Did I fucking curse at you?” while lunging toward § 87(2)(b) with a clenched fist. PO Gergis did not strike § 87(2)(b) said, “I’m supposed to be scared of that?” PO Gergis then referred to § 87(2)(b) as a “little bitch” and said, “I’ll take your ass back to your country.” § 87(2)(b) told PO Gergis that he was born in the United States, and PO Gergis allegedly said, “I don’t give a fuck, kahwel.” Kahwel is an Arabic term meaning “faggot.”

According to § 87(2)(b) PO Gergis and PO Arkenau then grabbed § 87(2)(b) s arms to place him under arrest (**Discussed in Allegations I-J**). § 87(2)(b) moved away from the officers, and PO Gergis said, “Turn the fuck around.” PO Gergis also allegedly removed his flashlight, swung it toward § 87(2)(b) and said, “I’ll beat the shit out of you.” PO Gergis stopped the swing of his flashlight prior to striking § 87(2)(b)

According to the officers, § 87(2)(b) exited his backyard onto the street and loudly refused additional commands to produce his identification. According to PO Gergis, § 87(2)(b) said, “Fuck off, I’m not giving you shit.” PO Arkenau stated that § 87(2)(b) clenched his fists and spoke loudly, but PO Arkenau could not otherwise describe § 87(2)(b) s

behavior. PO Gergis and PO Arkenau then grabbed § 87(2)(b)'s arms to place him under arrest. § 87(2)(b) moved away from them and moved his body and arms back and forth.

Prior to viewing the video, PO Gergis denied making all of the statements alleged by § 87(2)(b) and he denied that he or PO Arkenau used profanity during the incident. PO Gergis acknowledged that he spoke Arabic, but he denied using profanity in Arabic during the incident. PO Gergis denied that he threatened to use force against § 87(2)(b) and denied swinging his flashlight toward him. PO Gergis was aware that § 87(2)(b) was Arab.

PO Arkenau did not recall whether or not he said, "Watch your fucking mouth," and PO Arkenau did not recall whether or not the officers used profanity during the incident. PO Arkenau did not recall whether or not PO Gergis made the comments alleged by § 87(2)(b) and he did not hear PO Gergis threaten to use force against § 87(2)(b).

The video footage shows § 87(2)(b), PO Gergis, and PO Arkenau walk to § 87(2)(b)'s car, and the video shows § 87(2)(b) retrieve a document from his car and hand it to PO Gergis while saying, "Check the address" <02:41-03:03>. § 87(2)(b) viewed the video and stated that the document he provided to PO Gergis was his identification. The video does not show § 87(2)(b) speak with a raised voice, use profanity, clench his fists, or refuse to provide his identification.

PO Gergis and PO Arkenau viewed the video, and both officers acknowledged that the video did not show § 87(2)(b) refuse to provide his identification in front of the house. Neither PO Gergis nor PO Arkenau recalled what § 87(2)(b) handed to PO Gergis. PO Arkenau could not clearly see § 87(2)(b)'s hands in the video, but he acknowledged that § 87(2)(b) did not appear to clench his fists or behave in a non-compliant manner.

The video footage appears to show § 87(2)(b) turn his head and speak with PO Arkenau immediately after handing his identification to PO Gergis <03:04-03:08>. The conversation between § 87(2)(b) and PO Arkenau is not audible in the video. § 87(2)(b) viewed the video and identified that moment as when PO Arkenau said, "Watch your fucking mouth." PO Arkenau viewed the video footage but stated that he still did not recall if he said, "Watch your fucking mouth."

The video shows § 87(2)(b) and PO Gergis speak with each other, but their initial conversation is not audible in the video <03:08-03:13>. The video shows PO Gergis lunge toward § 87(2)(b) while saying, "Did I fucking curse at you? You little bitch. Did I fucking curse at you? Have some respect. I'll send your ass back to your [inaudible word]." <03:13-03:20>. The video shows § 87(2)(b) respond by saying, "I was born here, dickhead, dickhead." <03:20-03:23>. The video then shows either § 87(2)(b) or PO Gergis say, "I don't give a fuck, kahwel," but it is not clear whose voice made that comment <03:23-03:27>.

The video shows § 87(2)(b) say, "Your mother," and it shows PO Gergis grab § 87(2)(b)'s arms <03:26-03:30>. PO Gergis says, "Turn the fuck around" twice <03:36 and 03:42>, and "I'll beat the shit out of you" <03:40>. PO Gergis also raises a clenched fist and swings it toward § 87(2)(b) without striking him <03:42>. § 87(2)(b) viewed the video and stated that PO Gergis held his flashlight while swinging at him. The video does not clearly show whether or not PO Gergis held his flashlight in his hand at the time that he swung his fist at § 87(2)(b).

After viewing the video, PO Gergis acknowledged that he said, "Did I fucking curse at you?" when he lunged toward § 87(2)(b). PO Gergis did not know why he made that comment. PO Gergis again denied referring to § 87(2)(b) as a "little bitch." PO Gergis heard the comment on the video and claimed that § 87(2)(b) made that comment. PO Gergis

claimed that he could not hear the comment, “I’ll send your ass back to your [inaudible word].” PO Gergis again denied making that comment. PO Gergis identified § 87(2)(b) as the person who said, “I don’t give fuck, kahwel.”

PO Gergis viewed the video of § 87(2)(b)’s arrest, but he could not determine who was speaking during that time. PO Gergis viewed the portion of the video in which he swung his fist toward § 87(2)(b) during his arrest, and he acknowledged that he took that action. PO Gergis denied that he held his flashlight in his hand at that time. PO Gergis took that action to convince § 87(2)(b) to stop resisting.

PO Arkenau viewed the video and said that PO Gergis said, “Little bitch,” “Turn the fuck around,” and “I’ll beat the shit out of you.”

Officers must be courteous and respectful in the interactions with the public. Patrol Guide Procedure 203-09. Officers are prohibited from using disrespectful remarks regarding another person’s ethnicity or race. Patrol Guide Procedure 203-10. Officers may use force when it is reasonable to place a person in custody. Patrol Guide Procedure 221-01. (BR 23-25)

§ 87(2)(g)

§ 87(2)(g)

Allegation I – Abuse of Authority: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis arrested § 87(2)(b)

Allegation J – Abuse of Authority: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Arkenau arrested § 87(2)(b)

It is undisputed that PO Arkenau and PO Gergis arrested § 87(2)(b)

§ 87(2)(b) stated that he handed his identification to PO Gergis on the street, that PO Gergis used profanity toward him, and that PO Gergis grabbed his arms immediately thereafter to place him in handcuffs. § 87(2)(b) denied swinging at any officer at any point during the incident, and § 87(2)(b) denied pushing PO Arkenau or making any physical contact with any officer in his backyard.

Prior to viewing the video, PO Gergis stated that § 87(2)(b) was not under arrest when he exited the backyard, and PO Gergis stated that § 87(2)(b) did not swing at any officer in the backyard. PO Gergis stated that § 87(2)(b) refused multiple commands to produce his identification by using profanity loudly on the street. PO Gergis stated that at least one person exited a nearby store to witness § 87(2)(b)'s alleged use of profanity, but PO Gergis did not recall seeing any other bystanders. PO Gergis stated that he advised § 87(2)(b) that he was guilty of disorderly conduct and that he needed to accompany the officers to the 69th Precinct stationhouse to be issued a summons. PO Gergis stated that § 87(2)(b) was guilty of disorderly conduct due to his raised voice and use of profanity. According to PO Gergis, § 87(2)(b) swung a closed fist at PO Arkenau's face at that time, and PO Gergis grabbed § 87(2)(b)'s fist and pulled his arm behind his back to arrest him. PO Gergis stated that § 87(2)(b) was guilty of disorderly conduct, obstructing governmental administration for refusing to provide his identification, and "attempting to assault a police officer" at the time of his arrest.

§ 87(2)(b)'s arrest report stated that § 87(2)(b) entered his backyard upon the officers' arrival and, "§ 87(2)(a) 160.50 § 87(2)(b)" § 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50 for swinging at PO Arkenau. PO Gergis acknowledged that he prepared § 87(2)(b)'s arrest report and entered it into the system. PO Gergis reviewed the arrest report during his CCRB interview and confirmed that it was consistent with what he prepared at the time of the incident.

In his deposition for § 87(2)(b)'s criminal court complaint, PO Gergis stated that § 87(2)(b) "§ 87(2)(a) 160.50" PO Gergis viewed his deposition during his CCRB interview and stated that the statement was true and consistent with what he prepared for the criminal court complaint (BR 26).

According to PO Arkenau, both officers reached an unspoken decision together to arrest § 87(2)(b) for disorderly conduct based on his alleged aggressive demeanor and use of profanity as previously described. PO Arkenau did not know of any other reason for § 87(2)(b)'s arrest because PO Gergis was the arresting officer. PO Arkenau did not recall whether or not there were civilian bystanders nearby at the time of § 87(2)(b)'s arrest.

PO Arkenau interpreted § 87(2)(b)'s behavior of clenching his fists as "attempting to swing" at an officer. PO Arkenau stated that § 87(2)(b) did not swing at him or PO Gergis at any point prior to his arrest, and PO Arkenau stated that § 87(2)(b) did not punch any officer. PO Arkenau stated that § 87(2)(b) did not push him or swing at him in the backyard.

As previously noted, the video footage contradicted the officers' statements that § 87(2)(b) used profanity loudly prior to the officers' use of profanity toward him. The video footage also contradicted the officers' statements that § 87(2)(b) refused to provide his identification and behaved in an aggressive manner by clenching his fists. As previously noted, the officers acknowledged that the video did not show § 87(2)(b) behave in such a manner.

The video does not show § 87(2)(b) swing at any officer or engage in any action that could be interpreted as "attempting to swing" at any officer prior to his arrest on the street

<03:13-03:37>. The video footage shows that one person stood outside of a shop across the street from § 87(2)(b)'s arrest, but the video shows that the person in question did not involve himself or herself in the incident. The video does not show any other bystanders in the vicinity of § 87(2)(b)'s arrest. The video shows PO Gergis approach § 87(2)(b) and reach out to grab his arms. The video shows § 87(2)(b) back away from PO Gergis and pull his arms away. The video shows that PO Gergis is positioned between § 87(2)(b) and PO Arkenau, and the video shows that PO Arkenau also grabbed § 87(2)(b)'s arms to place him under arrest <03:13-03:37>.

After viewing the video footage of § 87(2)(b)'s arrest, PO Gergis initially could not determine when § 87(2)(b) swung at PO Arkenau <03:21-03:37>. PO Gergis viewed the video for a second time, and he described § 87(2)(b)'s actions in the video as "leaping forward with his fist" and stated that § 87(2)(b)'s clenched fist was raised. PO Gergis could not identify the exact moment in the video where § 87(2)(b) took that action, and the video footage does not show § 87(2)(b) take any such action.

PO Gergis viewed the video footage for a third time <03:30-03:37>. PO Gergis then stated that § 87(2)(b) was "leaping forward with his fist" at the 03:31-03:32 mark, and PO Gergis stated that he grabbed § 87(2)(b)'s hands at that time. The video does not show § 87(2)(b) take any such action, and the video shows that PO Gergis had already grabbed § 87(2)(b)'s arms at the time that § 87(2)(b) allegedly "leapt forward with his fist." PO Gergis could not explain why the video did not show the actions he alleged.

After § 87(2)(b)'s arrest, § 87(2)(b) and § 87(2)(b) spoke with PO Gergis (**Discussed in Allegation L**). The video footage shows PO Gergis tell § 87(2)(b)'s family that § 87(2)(b) "shrugged" PO Arkenau in the backyard <06:54-07:46>. PO Gergis viewed that portion of the video and stated that viewing the video caused him to recall that § 87(2)(b) pushed PO Arkenau using two hands to shove PO Arkenau's chest in the backyard. PO Gergis also stated that § 87(2)(b) swung a closed fist at PO Arkenau immediately after pushing him. PO Gergis was asked to explain why § 87(2)(b) was not immediately placed under arrest after swinging at PO Arkenau in the backyard. PO Gergis said that § 87(2)(b) was under arrest in the backyard for assault after swinging at PO Arkenau, and he said that the officers walked with him to his car to obtain his identification to make it easier to process § 87(2)(b)'s arrest.

PO Arkenau viewed the portion of the video in which PO Gergis told § 87(2)(b)'s family that § 87(2)(b) "shrugged" PO Arkenau <07:18-07:20>. PO Arkenau stated that PO Gergis was referring to § 87(2)(b)'s alleged action of clenching his fist in the backyard. PO Arkenau stated that § 87(2)(b) did not push him, make physical contact with him, or swing at him in the backyard.

A police officer may arrest and take into custody a person when he has probable cause to believe that person has committed a crime. *People v. DeBour*, 40 N.Y.2d 201 (1976).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he uses abusive or obscene language in a public place. A person may be guilty of disorderly conduct only when the situation extends beyond the individual disputants to become a potential or immediate public problem. PL§240.20; *People v. Baker*, 20 N.Y.3d 354; *People v. Gonzalez*, 25 N.Y.3d 1100.

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of

intimidation, physical force or interference, or by means of any independently unlawful act.
PL§195.05. (BR 27).

A person is guilty of menacing a police officer or peace officer when he or she intentionally places or attempts to place a police officer or peace officer in reasonable fear of physical injury, serious physical injury, or death by displaying a deadly weapon, knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not, where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer or peace officer.
PL§120.18.(BR 28).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Force: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Arkenau used a chokehold against § 87(2)(b)

§ 87(2)(b) stated that he backed away from PO Arkenau and PO Gergis as they grabbed his arms. As he walked backwards, PO Arkenau allegedly placed § 87(2)(b) in a chokehold by wrapping his arm around § 87(2)(b)'s head and making contact with the front of § 87(2)(b)'s neck using the inside of his elbow. § 87(2)(b)'s breathing was not restricted from PO Arkenau's alleged chokehold.

PO Arkenau denied making contact with the front of § 87(2)(b)'s neck, and PO Arkenau denied wrapping his arm around § 87(2)(b)'s neck to place him in a chokehold. PO Gergis also denied that PO Arkenau placed § 87(2)(b) in a chokehold, and PO Gergis did not see PO Arkenau make contact with § 87(2)(b)'s neck.

The video footage shows PO Arkenau place his arm around § 87(2)(b)'s right shoulder to restrain him while § 87(2)(b) moved away from the officers <03:35-03:41>. § 87(2)(b) viewed the video and stated that PO Arkenau placed him in a chokehold at that time. PO Arkenau viewed that portion of the video and stated that he did not make contact with § 87(2)(b)'s neck at that time.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation L – Discourtesy: At § 87(2)(b) § 87(2)(b) in Brooklyn, Police Officer John Gergis spoke discourteously to § 87(2)(b) and § 87(2)(b)

As the officers handcuffed § 87(2)(b) and § 87(2)(b), § 87(2)(b) approached the scene of the arrest. The officers placed § 87(2)(b) into their police van and then spoke with § 87(2)(b)'s family members. § 87(2)(b) could not hear what the officers said from inside of the van.

According to § 87(2)(b), PO Gergis approached her, asked if § 87(2)(b) was § 87(2)(b)'s father, and said, "I'm not trying to do that translating shit." § 87(2)(b) told PO Gergis that § 87(2)(b) spoke English in addition to Arabic, and she stated that she would translate for him if necessary. PO Gergis told § 87(2)(b) that § 87(2)(b) used profanity toward his deceased mother and pushed PO Arkenau, which resulted in his arrest. Prior to viewing the video, § 87(2)(b) did not recall whether or not PO Gergis used profanity toward her or her family. § 87(2)(b) did not hear PO Gergis use profanity towards him, § 87(2)(b) or § 87(2)(b).

The video footage shows PO Gergis and PO Arkenau speak with § 87(2)(b)'s family <06:42-07:46>. The audio does not clearly reveal whether or not PO Gergis says, "I'm not doing that translating shit." The audio shows PO Gergis say, "...Then he walks through and shrugs my partner and says, 'Why are you in my house? Fuck you.' You don't say fuck you to me. Then he goes, 'You motherfucker.' I said, 'Excuse me?'" He goes, "Fuck you, kahwel." So, you need to teach your son some manners. He calls me a kahwel? I'll fuck his ass up. You understand?" The audio also reveals that PO Gergis says, "I treated him with respect. He took a shit on me. That's what he did. So now he's gonna be in my cell."

§ 87(2)(b) viewed the video footage, and she stated that viewing the video refreshed her recollection of the fact that PO Gergis used profanity during the incident by saying, "I'll fuck his ass up" and "He took a shit on me" in reference to § 87(2)(b), § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) viewed the video and confirmed that the video accurately depicted PO Gergis' conversation with them.

PO Gergis viewed the video, and he then acknowledged that he said, "I'll fuck his ass up" in reference to § 87(2)(b). PO Gergis stated that he made that comment out of anger and for no other reason. PO Gergis also acknowledged that he said, "He took a shit on me, and now he's going to be in my cell." PO Gergis made that comment as a way of describing § 87(2)(b)'s use of profanity during the incident, and PO Gergis had no other reason for making such a comment. PO Gergis denied saying, "I'm not trying to do that translating shit."

Officers must be courteous and respectful in the interactions with the public. Patrol Guide Procedure 203-09.

§ 87(2)(g)

Allegation M – Abuse of Authority: Inside the 69th Precinct stationhouse, Police Officer John Gergis did not obtain medical treatment for § 87(2)(b)

According to § 87(2)(b), PO Gergis and PO Arkenau escorted him to the 69th Precinct stationhouse, and PO Gergis placed him inside a holding cell. § 87(2)(b) alleged that he asked PO Gergis if he could "see someone" because he injured his tooth during his arrest. During his CCRB interview, § 87(2)(b) did not recall whether PO Gergis responded verbally to his request, but § 87(2)(b) stated that PO Gergis responded in some way so as to indicate that he could not receive medical treatment. During § 87(2)(b)'s 50h testimony § 87(2)(a) Gen.Mun. § 87(2)(g)

On December 19, 2016, § 87(2)(b) received medical treatment from a dentist who diagnosed him with a chipped tooth. § 87(2)(b) underwent a root canal operation to repair his injured tooth (BR 33).

According to PO Gergis, he asked § 87(2)(b) if he wanted medical attention inside the stationhouse, and § 87(2)(b) said, "No." PO Gergis did not have any other conversation with § 87(2)(b) regarding whether or not he wanted medical treatment. PO Gergis stated that § 87(2)(b) did not request medical treatment, and PO Gergis denied that he ever refused to obtain medical treatment for him. PO Arkenau did not hear § 87(2)(b) request medical treatment from PO Gergis, and PO Arkenau did not witness PO Gergis ever refuse to provide medical treatment to § 87(2)(b) upon request.

There was no medical treatment of prisoner report prepared for § 87(2)(b)'s arrest. Neither § 87(2)(b)'s arrest report nor the command log notes that § 87(2)(b) had any visible injuries.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Reviewer: _____

Title/Signature Print Date